

APPEAL NO. 021796
FILED AUGUST 20, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 1, 2002. The hearing officer determined that the respondent/cross-appellant's (claimant) _____, compensable injury extends to and includes depression, but does not extend to and include his left shoulder or left brachial plexus. The appellant/cross-respondent (carrier) appealed the determination regarding depression. The claimant responded urging affirmance of that determination. The claimant appealed the determinations regarding his left shoulder and left brachial plexus. The file does not contain a response from the carrier.

DECISION

Affirmed.

We first note that in the claimant's appeal, he asserts that the hearing officer committed reversible error by taking official notice of DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 27th Edition (DORLAND'S) in his decision without telling the parties he intended to do so at the hearing. While we agree it was error for the hearing officer to consider evidence outside of the record, we cannot agree that it was reversible error. Our standard of review regarding the hearing officer's evidentiary matters is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain a reversal of a judgment based upon the hearing officer's abuse of discretion in admitting evidence, an appellant must first show that the admission was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Upon careful review of the hearing officer's decision and order, we are convinced that he based his decision on the evidence presented at the hearing, and not on any information he obtained from DORLAND'S.

We have reviewed both parties complained-of determinations and find that the hearing officer's decision and order is supported by sufficient evidence to be affirmed in its entirety. The issue as to the extent of the claimant's compensable injury presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issues. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no

sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Daniel R. Barry
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge